IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.714 OF 2003
IN
SUMMARY SUIT NO.1908 OF 2002

M/s.BPL Mobile Communications Limited ... Plaintiff

versus

M/s.P & N Vinraj and others ... Defendants

Mr.S.U.Nair for plaintiff.
Mr.Anil Agrawal for defendants.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 13th June 2005

PC :

1. M/s.BPL Communications Ltd. have filed present suit as a summary suit to claim money from their business associates. The sum claimed is Rs.27,71,235/-. It is contended in para no.14 of the plaint that the claim is based on contractual obligations and based upon letter dated 18th June 2001, Deed of Indemnity dated 18th June 2001 which is in respect of payments received from subscribers by defendants after 10th August 1999. It is contended that the defendants ought to make payments to the

plaintiff in accordance with the contract. Such payments received after 10th August 1999 by the defendants as well as monies due and payable by defendants to the plaintiff under the agreements (Exhibits-H and I) are the basis of the claim. An affidavit-in-reply has been filed to the summons for judgement and the issue of maintainability of the suit as a summary suit is raised squarely. It is contended that the claim in the suit cannot be decided in a summary manner inasmuch as the defendants plead reciprocal obligations. They also deny the execution of Exhibit-I. Having perused this affidavit in reply and the rejoinder thereto, I suggested to Mr.Nair appearing for the plaintiff that the claim in the suit is not capable of being decided in summary procedure. Mr.Nair upon taking instructions, applies for withdrawal of the summons for judgement. Leave granted.

2. In the light of withdrawal of the summons for judgement, unconditional leave granted to defendants to defend the suit. Suit is transferred to the list of commercial causes. Written statement to be filed within a period of eight weeks from today. Usual directions for discovery and inspection.

3. It is clarified that withdrawal of summons for judgement would not constitute a bar for the plaintiff while invoking the provisions of Section 151 read with Order XII, Rule 6 and/or Order XXXVIII Order XXXIX, Rule 10 of the CPC and applying for appropriate reliefs including decree on admission. Needless to state that on such application being made, it will be equally open for the defendants to raise all contentions. Leaving these remedies to plaintiff open, present summons for judgement is allowed to be withdrawn.

(S.C.DHARMADHIKARI, J.)